

Message Text

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TO AMEMBASSY LIMA IMMEDIATE

C O N F I D E N T I A L STATE 273577

LIMDIS

E.O. 11652: GDS

TAGS: EIND, EINV, EMIN, PFOR, PE

SUBJECT: MARCONA - INTERIM AGREEMENT AND LETTER

THE FOLLOWING IS ANNEX B OF MINPECO-MARCONA LETTER (SEPTTEL

1. EACH SHIPMENT OF CARGO HEREUNDER SHALL BE CARRIED
SUBJECT TO THE PROVISIONS OF THE MODIFIED SAN JUAN BAY ORE
CHARTER FORM (AS AMENDED JANUARY 1961) ATTACHED HERETO AND
MADE A PART HEREOF, EXCEPT AS SUCH PROVISIONS ARE CONTRARY
TO OR IN CONFLICT WITH THE TYPEWRITTEN PROVISIONS OF THIS
ANNEX. EACH OF THE PROVISIONS OF THIS ANNEX AND OF THE
DOCUMENTS ATTACHED HERETO SHALL BE AND BE DEEMED SEVERABLE
AND IF ANY PROVISION OR PART OF ANY PROVISION SHALL BE
HELD INVALID, ILLEGAL OR UNENFORCEABLE, THE REMAINING PRO-
VISIONS OR PART OF ANY PROVISION SHALL CONTINUE IN FULL
FORCE AND EFFECT.

2. CARRIER SHALL HAVE THE OPTION OF LIGHT LOADING VESSELS
AND SHIPPER SHALL NOT BE LIABLE FOR DEADFREIGHT WHEN SUCH
LIGHT LOADING IS DONE TO ACCOMMODATE CARRIER OR WHEN
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CARRIER NOMINATES A VESSEL WHICH HAS A PERMISSIBLE FULL
DRAUGHT IN EXCESS OF THE RECOGNIZED SAFE DRAUGHT FOR EN-
TERING A PARTICULAR DISCHARGE PORT. SHIPPER SHALL, HOWEVE
PAY CARRIER DEADFREIGHT WHEN A VESSEL IS LIGHT LOADED

BECAUSE OF SHIPPER'S FAILURE TO SUPPLY SUFFICIENT CARGO AS REQUESTED BY THE VESSEL'S MASTER IF SUCH ADDITIONAL CARGO WOULD NOT HAVE CAUSED THE VESSEL TO BE OVERLOADED OR ITS DRAUGHT TO BE TOO GREAT FOR ENTERING THE DISCHARGE PORT

3. CARRIER SHALL KEEP SHIPPER ADVISED OF THE EXPECTED DATE OF READINESS TO LOAD OFF VESSELS WHICH HAVE BEEN NOMINATED FOR LOADING. IN THE EVENT A VESSEL DOES NOT ARRIVE AT THE LOADING PORT WITHIN TEN (10) DAYS OF THE DATE FOR WHICH IT HAS BEEN NOMINATED TO LOAD, THEN CARRIER SHALL BE REQUIRED TO WAIT TO TENDER THE VESSEL UNTIL THE ORE SUPPLIER'S BERTH IS CLEAR OF OTHER VESSELS AND UNTIL SUCH SUPPLIER HAS AVAILABLE SUFFICIENT SUPPLY OF IRON ORE OF THE PROPER GRADE TO MAKE THE INTENDED SHIPMENT. SUCH WAITING TIME SHALL NOT COUNT AS LAYTIME AND SHALL BE FOR CARRIER'S ACCOUNT. CARRIER MAY WITHDRAW THE NOMINATION OF ANY VESSEL UPON GIVING SHIPPER AT LEAST SEVENTY-TWO (72) HOURS' ADVANCE NOTICE, PROVIDED CARRIER SUBSTITUTES A SIMILAR VESSEL OR VESSELS IN SUBSTANTIALLY EQUIVALENT POSITION AND OF EQUIVALENT CARGO CAPACITY.

4. SHIPMENTS SHALL BE SPREAD REASONABLY EQUALLY THROUGHOUT THE MONTHS OF EACH QUARTER CONSISTENT WITH THE VOYAGE TIME INTERVALS BETWEEN LOADING DATES OF THE VESSEL EMPLOYED HEREUNDER.

5. (A) LAYTIME AT LOADING AND DISCHARGING PORTS SHALL BE CALCULATED ON THE BASIS OF THE FOLLOWING SCHEDULES:

LOADING PORT	HOURLY LOADING RATE
SAN NICOLAS BAY, PERU	3,000 TONS PER HOUR OR PRO
-	RATA

(B) LAYTIME SHALL COMMENSE AT LOADING PORT FOUR (4) HOURS AFTER VESSEL HAS ARRIVED, TENDERED NOTICE OF READINESS
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IN FREE PRATIQUE AND IN ALL RESPECTS READY TO LOAD OR DISCHARGE, UNLESS SOONER BERTHED, IN WHICH CASE LAYTIME SHALL COMMENCE WHEN THE VESSEL TENDERS FROM ALONGSIDE IN FREE PRATIQUE AND IN ALL RESPECTS READY TO LOAD.

(C) LAYTIME FOR LOADING AND DISCHARGING SHALL NOT BE REVERSIBLE.

(D) DEMURRAGE RATES SHALL BE PAID BY SHIPPER AT THE FOLLOWING DAILY RATES, OR PRO RATA FOR PART OF A DAY:

FOR VESSELS OF UP TO 19,000 DWT \$2,500

FOR LARGER VESSELS UP TO 39,500 DWT \$3,500

FOR LARGER VESSELS UP TO 59,999 DWT 4,800

FOR LARGER VESSELS UP TO 79,999 DWT 5,500

FOR VESSELS OVER 80,000 DWT 6,500

6. SHIPPER SHALL PAY DEMURRAGE PER RUNNING DAY AND PRO RATA FOR PART THEREOF, AT THE ABOVE RATES, FOR ALL TIME LOST IN EXCESS OF THE ALLOWED LAYTIME AT LOADING PORT. IF, HOWEVER, DEMURRAGE SHALL BE INCURRED AT PORT OF LOADING BECAUSE OF FIRE OR EXPLOSION IN OR ABOUT THE PLANT, BREAKDOWN OF MACHINERY OR LOADING OR DISCHARGING FACILITIES OF SHIPPER, SHIPPER'S SUPPLIER OR THE CONSIGNEE OF THE CARGO, STRIKES, LOCKOUTS OR STOPPAGES OF WORK OF EMPLOYEES OF SHIPPER OR OF ITS SUBSIDIARIES OR AFFILIATED CORPORATIONS (OTHER THAN CARRIER) OR OF ITS SUPPLIERS, CONTRACTORS OF SUBCONTRACTORS OR OF THE CONSIGNEE OR RECEIVER OF THE CARGO, THE RATE OF DEMURRAGE SHALL BE REDUCED TO ONE-HALF (1/2) THE RATE HEREINABOVE PROVIDED.

7. OWNERS OR MASTERS OF VESSELS SCHEDULED TO LOAD AT SAN NICOLAS BAY, PERU, SHALL NOTIFY SHIPPER BY LETTER, CABLE OR RADIO VESSEL'S EXPECTED ARRIVAL AT THE LOADING PORT AT LEAST FIFTEEN (15) DAYS PRIOR TO ETA, UNLESS OTHERWISE CONFIDENTIAL

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MUTUALLY AGREED. EACH VESSEL SHALL ALSO RADIO OR CABLE SHIPPER ITS ETA FORTY-EIGHT (48) AND TWENTY-FOUR (24) HOURS PRIOR TO ARRIVAL. SHOULD VESSELS NOT COMPLY WITH THIS CLAUSE, SHIPPER SHALL NOT BE OBLIGED TO ACCEPT VESSEL UNTIL TWENTY-FOUR (24) HOURS AFTER ARRIVAL.

8. IF WAR CONDITIONS OR RESTRAINT OR SEIZURES OR REQUISITION BY GOVERNMENT SHALL MAKE THE PERFORMANCE OF THIS CONTRACT SUBSTANTIALLY IMPOSSIBLE, THE SAME MAY BE TERMINATED BY EITHER PARTY UPON NOTICE WITHOUT FURTHER LIABILITY HEREUNDER. NEITHER PARTY SHALL BE LIABLE TO THE OTHER HEREUNDER AS A RESULT OF ANY FAILURE TO PERFORM OR DELAY IN PERFORMANCE CAUSED BY OR ARISING OUT OF AN ACT OF GOD, ACT OF WAR, ACT OF PUBLIC ENEMIES, ARREST OR RESTRAINT OF PRINCES, RULERS OR PEOPLE, LOCKOUTS, STOPPAGE OR RESTRAINT OF LABOR, RIOT OR CIVIL COMMOTION, INTERFERENCE BY CIVIL OR MILITARY AUTHORITIES, GOVERNMENTAL EMBARGOES OR RESTRICTIONS ON EXPORTS AND IMPORTS, ACCIDENTS TO, FIRES OR BREAKDOWN OF VESSELS, HARBORS, DOCKS OR NECESSARY ADJUNCTS TO TRANSPORTATION, ACCIDENTS TO OR LOSS OF SOURCES OF SUPPLY OF CARGO OR FACILITIES TO MAKE SUCH CARGO AVAILABLE OR ANY OTHER CAUSE OR EVENT

BEYOND THE REASONABLE CONTROL OF SUCH PARTY.

9. VESSELS EMPLOYED SHALL RANGE FROM 20,000 DWT TO 170,000 DWT. EVERY VESSEL EMPLOYED FOR SHIPMENT OF ORE HEREUNDER SHALL BE SUITABLE IN EVERY RESPECT FOR LOADING AND DISCHARGING OF ORE IN ACCORDANCE WITH CUSTOMARY PROCEDURES EMPLOYED AT THE LOADING PORT.

10. BUYER SHALL SUBMIT TO SELLER FOR SELLER'S APPROVAL THE FOLLOWING SHIPPING SCHEDULES AND NOICES ON THE BASIS OF WHICH SELLER SHALL ARRANGE EACH SHIPMENT.

(A) NOT LESS OFTEN THAN EACH TWO WEEKS BUYER SHALL GIVE SELLER A SHIPPING SCHEDULE FOR A PERIOD COVERING NOT LESS THAN THE ENSUING THIRTY (30) DAYS. INFORMATION SUPPLIED WITH RESPECT TO SUCH SHIPPING SHALL INCLUDE THE NAME OF THE VESSEL, THE CHARTERPARTY DESIGNATION, THE ESTIMATED TIME OF ARRIVAL, VESSEL CONFIGURATION AND DISTRIBUTION OF HOLDS, ORE SPECIFICATION, CONTRACT NUMBER, CONFIDENTIAL

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AND THE ESTIMATED QUANTITY OF ORE TO BE LOADED. MODIFICATIONS IN SUCH SCHEDULE AFFECTING A SHIP LOADING TO OCCUR PRIOR TO THE RECEIPT OF THE NEXT SUCCEEDING REGULAR SCHEDULE SHALL BE SENT BY TELEX FROM BUYER TO SELLER AT SELLER'S PORT, SAN NICOLAS, PERU.

11. (1) SELLER SHALL LOAD ORE ON BOARD VESSELS NOMINATED IN ACCORDANCE WITH PARAGRAPH 10, SPOUT TRIMMED AT ONE SAFE BERTH CONSTRUCTED FOR THE PRIMARY PURPOSE OF LOADING ORE AT SAN NICHOLAS, PERU, VESSEL BEING ALWAYS SAFELY AFLOAT, FREE OF ALL RISK EXPENSE AND DAMAGE TO BUYER AND/OR VESSEL.

(2) LAYTIME AND DEMURRAGE TERMS SHALL BE IN ACCORDANCE WITH THE SEPARATE LAYTIME AGREEMENTS ENTERED INTO BETWEEN BUYER AND SELLER AND AS MAY BE AMENDED FROM TIME TO TIME.

(3) NOTICES BY LETTER, CABLE OR RADIO SHALL BE GIVEN OF A VESSEL'S EXPECTED ARRIVAL AT THE LOADING PORT AT LEAST FIFTEEN(15) DAYS PRIOR TO THE ESTIMATED TIME OF ARRIVAL OF THE VESSEL, UNLESS OTHERWISE MUTUALLY AGREED. EACH VESSEL SHALL ALSO RADIO OR CABLE ITS ESTIMATED TIME OF ARRIVAL ONCE FORTY-EIGHT (48) HOURS PRIOR TO ARRIVAL AND A SECOND TIME TWENTY-FOUR (24) HOURS PRIOR TO ARRIVAL IF ANY VESSEL FAILS TO COMPLY WITH THIS PROVISION, SELLER SHALL NOT BE OBLIGATED TO ACCEPT A VESSEL UNTIL TWENTY-FOUR (24) HOURS AFTER ITS ARRIVAL.

12. (1) EACH SHIPMENT OF ORE SHALL BE DEEMED TO HAVE BEEN SOLD AND DELIVERED TO BUYER, AND RISK OF LOSS OR DAMAGE THERETO SHALL PASS TO BUYER ON LOADING OF ORE ON BOARD

VESSEL; PROVIDED, HOWEVER, THAT LEGAL TITLE TO SUCH ORE

SHALL REMAIN WITH SELLER AS SECURITY FOR AND UNTIL PAYMENT OF THE PURCHASE PRICE OF SUCH SHIPMENT. UPON RECEIPT BY SELLER OF PAYMENT FOR SUCH SHIPMENT, LEGAL TITLE THERETO SHALL AUTOMATICALLY PASS TO BUYER.

(2) IN THE EVENT OF ANY PARTIAL OR TOTAL LOSS OF THE CARGO AFTER THE SAME HAS BEEN LOADED ABOARD VESSEL, BUYER SHALL PAY SELLER AN AMOUNT EQUAL TO THE FOB VALUE OF CONFIDENTIAL

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SUCH PART OR WHOLE OF THE CARGO LOST AND SUCH PART OR WHO OF THE CARGO LOST SHALL BE DEEMED TO HAVE BEEN DELIVERED TO BUYER HEREUNDER FOR ALL PURPOSES OF THIS CONTRACT.

13. FOR ORE DELIVERED HEREUNDER, BUYER SHALL ARRANGE AT NO COST TO SELLER FOR MARINE AND WAR RISK INSURANCE ON EACH CARGO SHIPPED IN THE AMOUNT OF AT LEAST ONE HUNDRED PERCENT (100) OF THE VALUE OF SUCH CARGO DETERMINED BY APPLYING THE APPLICABLE FOB PRICES ESTABLISHED FOR THE SHIPMENT TO THE OCEAN BILL OF LADING WEIGHT AND LOADING ANALYSIS.

14. (1) PROMPTLY FOLLOWING THE COMPLETION OF LOADING OF EACH SHIPMENT, SELLER SHALL FURNISH BUYER WITH THE FOLLOWING DOCUMENTS:

(A) A FULL SET OF NEGOTIABLE AND DUPLICATE CLEAN ON BOARD OCEAN BILLS OF LADING.

(B) CERTIFICATE OF WEIGHT AT LOADING PORT, IN THE ORIGINAL AND SIX SIGNED COPIES.

(C) CERTIFICATE OF ANALYSIS AT LOADING PORT, IN THE ORIGINAL AND SIX SIGNED COPIES.

15. ALL TAXES, LEVIES, IMPORTS, TARIFFS, LICENSES AND FEES OF WHATEVER NATURE NOW OR HEREAFTER IMPOSED BY THE GOVERNMENT OF PERU ON ACCOUNT OF IRON ORE SALES MADE PURSUANT TO THIS AGREEMENT OR ON VESSELS USED IN CARRYING OUT THE INTENT OF THIS AGREEMENT, SHALL BE PAID BY SELLER INGERSOLL

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